



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R10-OAR-2011-0724, FRL-9676-6]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Prevention of Significant Deterioration Greenhouse Gas Permitting Authority and Tailoring Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) submittals from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA finds that the current Idaho SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time. We will address the requirements of this sub-element in a separate action. EPA is also approving a SIP revision that applies Idaho's Prevention of Significant Deterioration (PSD) Program to greenhouse gas (GHG) emitting sources above certain thresholds, updates Idaho's SIP to incorporate by reference revised versions of specific federal regulations, and removes unnecessary language from the SIP due to the incorporation by reference of the federal NAAQS and PSD regulations. In addition, EPA is rescinding the Federal Implementation Plan (FIP) put in place to ensure the availability of a permitting authority for greenhouse gas emitting sources in Idaho.

**DATES:** This action is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2011-0724. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall at telephone number: (206) 553-6357, e-mail address: [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

#### **Table of Contents**

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## **I. Background**

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called “infrastructure” requirements. To help states meet this statutory requirement for the 1997 8-hour ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).<sup>1</sup> In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards. On September 15, 2008, the State of Idaho submitted a certification to EPA certifying that Idaho’s SIP meets the infrastructure obligations for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. The certification included an analysis of Idaho’s SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. Subsequently, on June 24, 2010, Idaho submitted an updated certification to EPA for sections 110(a)(2)(D) and 110(a)(2)(G). On April 11, 2012, EPA published a notice of proposed rulemaking (NPR) to act on Idaho’s infrastructure SIP for the

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<sup>1</sup> William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards.” Memorandum to EPA Air Division Directors, Regions I-X, October 2, 2007.

1997 ozone NAAQS (77 FR 21702). Specifically in the NPR, EPA proposed approval of Idaho's SIP as meeting the requirements for the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). As discussed in the NPR, the proposed action did not address CAA section 110(a)(2)(E)(ii), which will be addressed in a separate action.

In the NPR, EPA also proposed to approve portions of the June 20, 2011, SIP revision submitted by Idaho that applies Idaho's PSD Program to GHG-emitting sources above certain thresholds, updates Idaho's SIP to incorporate by reference revised versions of specific federal regulations, and removes unnecessary language from the SIP due to the incorporation by reference of the federal NAAQS and PSD regulations. In addition, EPA proposed to rescind the FIP put in place to ensure the availability of a permitting authority for GHG-emitting sources in Idaho.

EPA provided a 30-day review and comment period on the NPR, published April 11, 2012 (77 FR 21702). The public comment period for EPA's NPR closed on May 11, 2012. EPA received no comments on the proposed action.

## **II. Scope of Action**

Idaho has not demonstrated authority to implement and enforce Idaho Administrative Procedures Act (IDAPA) Chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.<sup>2</sup>

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<sup>2</sup> "Indian country" is defined under 18 U.S.C. 1151 as: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or

Therefore, EPA proposes that this SIP approval not extend to “Indian Country” in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574 (October 4, 2001) (full approval does not extend to Indian Country).

### **III. Final Action**

EPA is approving the SIP submittals from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is approving in full the following section 110(a)(2) infrastructure elements for Idaho for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time. EPA will address the requirements of this sub-element in a separate

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without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

action. EPA is also approving a portion of Idaho's June 20, 2011, SIP submittal that applies Idaho's PSD Program to GHG-emitting sources at the emissions thresholds and in the same time frames as those specified in the Tailoring Rule (75 FR 31514, June 3, 2010). In conjunction with this approval of Idaho's PSD program for GHG-emitting sources, EPA is rescinding the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho.

EPA is also approving portions of Idaho's June 20, 2011, SIP submittal to revise the incorporation by reference of federal regulations revised as of July 1, 2010, in order to ensure Idaho's SIP is up to date with changes to federal regulations. EPA is not acting on the portions of the SIP revision that are not related to the criteria pollutants regulated under title I of the CAA or the requirements for SIPs under section 110 of the CAA. Finally, EPA is approving the removal of language from the Idaho SIP that has become unnecessary due to Idaho's incorporation by reference of the federal NAAQS and the federal PSD regulations. Specifically, EPA is approving the removal of the subsections of IDAPA 58.01.01.577 "Ambient Air Quality Standards for Specific Pollutants" that relate to pollutants for which EPA has promulgated a NAAQS, and which are now unnecessary because Idaho has incorporated the federal NAAQS by reference into the state SIP. EPA is also approving the changes to Idaho's PSD regulations at IDAPA 58.01.01.581.01 to remove the increments table in its entirety, and to instead reference the federal PSD increment requirements contained in 40 CFR 52.21(c), which are incorporated by reference in the Idaho SIP. This action is being taken under section 110 and part C of the CAA.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).



Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 29, 2012

Signed: Dennis J. McLerran  
Regional Administrator  
Region 10.

40 CFR Part 52 is amended as follows:

**PART 52 - [AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart A – General Provisions**

2. § 52.37 is amended by removing and reserving paragraph (b)(4).

**Subpart N – Idaho**

3. In § 52.670:

a. The table in paragraph (c) is amended by revising entry 107, removing entry 577, and revising entry 581.

b. The table in paragraph (e) is amended by adding an entry at the end of the table for “Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.”

**§ 52.670 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Idaho Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01 - Rules for the Control of Air Pollution in Idaho				
* * * * *				
107	Incorporations by Reference	10/6/10, 5/8/09, 3/30/07, 3/20/04,	[Insert <u>Federal Register</u> publication date] [Insert page number where the document	Except Section 107.03(f) through (m) and (o).

		7/1/97, 5/1/94	begins]	
* * * *				
581	Prevention of Significant Deterioration (PSD) Increments	10/6/10, 4/11/06, 7/1/97, 5/1/94	[Insert <u>Federal Register</u> publication date] [Insert page number where the document begins]	
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(e) \* \* \*

### EPA-Approved Idaho Nonregulatory Provisions and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or non- attainment area	State submittal date	EPA approval date	Comments
* * * *				
Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.	Statewide	9/15/2008, 6/24/2010	[Insert <u>Federal Register</u> publication date] [Insert page number where the document begins]	This action addresses following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2012-17277 Filed 07/16/2012 at 8:45 am; Publication Date: 07/17/2012]